

## § 37.7

## 29 CFR Subtitle A (7-1-00 Edition)

- (1) On a prohibited ground:
  - (i) Excluding individuals from a WIA Title I—financially assisted program or activity;
  - (ii) Denying them the benefits of such a program or activity; or
  - (iii) Subjecting them to discrimination; or
- (2) Defeating or substantially impairing the accomplishment of the objectives of either:
  - (i) The WIA Title I—financially assisted program or activity; or
  - (ii) The nondiscrimination and equal opportunity provisions of WIA or this part.
- (f) (1) A recipient must not permit participants to be employed or trained in sectarian activities.
  - (2) This paragraph applies to any facility that is, or will be, primarily used or inherently devoted either:
    - (A) For sectarian instruction; or
    - (B) As a place of worship,
  - (ii) A recipient must not permit participants to be employed or trained in any way to:
    - (A) Construct any part of such a facility,
    - (B) Operate any part of such a facility, or
    - (C) Maintain any part of that facility.
  - (3) If a facility is not primarily or inherently devoted to sectarian instruction or religious worship, a recipient may permit the use of WIA Title I funds to employ participants to maintain the facility, if the organization that operates the facility is part of a program or activity that provides services to participants.
  - (g) The exclusion of an individual from programs or activities limited by Federal statute or Executive Order to a certain class or classes of individuals of which the individual in question is not a member is not prohibited by this part.

### **§ 37.7 What specific discriminatory actions based on disability are prohibited by this part?**

- (a) In providing any aid, benefits, services, or training under a WIA Title I—financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or

other arrangements, on the ground of disability:

- (1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
- (2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;
- (3) Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
- (4) Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
- (5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
- (6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.
- (b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants.
- (c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIA Title I—financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.
- (d) A recipient must administer WIA Title I—financially assisted programs and activities in the most integrated

setting appropriate to the needs of qualified individuals with disabilities.

(e) A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

(1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIA Title I—financially assisted program or activity with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

(f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On the basis of disability:

(i) Excluding qualified individuals from a WIA Title I—financially assisted program or activity;

(ii) Denying them the benefits of such a program or activity; or

(iii) Subjecting them to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:

(i) The WIA Title I—financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIA or this part.

(g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities

that are licensed or certified by a recipient are not, themselves, covered by this part.

(i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

(j) Nothing in this part prohibits a recipient from providing aid, benefits, services, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

(k) A recipient must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIA Title I or this part.

(l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(m) The exclusion of an individual without a disability from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.

(n) This part does not require a recipient to provide any of the following to individuals with disabilities:

(1) Personal devices, such as wheelchairs;

(2) Individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) Readers for personal use or study; or

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(4) Services of a personal nature, including assistance in eating, toileting, or dressing.

(o)(1) Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provided under WIA Title I or this part that such individual chooses not to accept.

(2) Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

### **§ 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?**

(a) With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of "reasonable accommodation" and "undue hardship" in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of "undue hardship" in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

(3) If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

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(b) A recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of "fundamental alteration" in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of "fundamental alteration" in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

### **§ 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?**

(a) Recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities, are as effective as communications with others.

(b) A recipient must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the WIA Title I—financially assisted program or activity. In determining what type of auxiliary aid or